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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,821	06/11/2001	Gregory A. Fish	GC-122.3-US-U1	3464

7590 10/16/2003

GATES & COOPER LLP  
Howard Hughes Center  
Suite 1050  
6701 Center Drive West  
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EXAMINER
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LANDAU, MATTHEW C

ART UNIT	PAPER NUMBER
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2815

DATE MAILED: 10/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/879,821

Applicant(s)

FISH ET AL.

Examiner

Matthew Landau

Art Unit

2815

--Th MAILING DATE of this communication app ars on th cover sheet with the correspond nc address --

THE REPLY FILED 30 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 11 and 18.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-3, 12, 17 and 19.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☒ The proposed drawing correction filed on 30 September 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): The 112, 2nd paragraph rejections of claims 1-3, 11, 12, and 17-19 are withdrawn. The rejection of claims 1, 2, 3, 12, and 17 under 102(b) as being anticipated by Huang '268 are withdrawn.

Continuation of 5. does NOT place the application in condition for allowance because: In response to Applicant's argument that "the leftmost grating section of FIG. 1 is indistinguishable from the remaining grating sections of the left sampled grating...", the leftmost section (considered to be the first grating burst portion) is clearly separated from the remaining grating sections by the phase shift section of length  $L_s$ , therefore it is distinct from the remaining sections. Since the section of length  $L_s$  is in fact a phase shift section, the phase of the grating burst portion must be different from the remaining grating sections of left sampled grating (ie, the sample grating portions). In response to Applicant's arguments that "each of the sampled grating portions of the left and the right sampled gratings of FIG. 1 are homogenous in phase", both the left and right sampled grating portions include phase shift sections of length  $L_s$ . Since the phase is shifted in both the left and right portions, each portion must have two phases. Therefore, the rejection of claims 1, 2, 3, 12, 17, and 19 under 102(b) as being anticipated by Huang '271 are maintained.

JEROME JACKSON  
PRIMARY EXAMINER